decided the appeal, in a case involving the application of Debra D. Carrigan for a new radio station in Las Vegas, Nevada, 100 FCC2d 721 (1985), review denied, 104 FCC2d 826 (1986), affirmed on other grounds sub nom. Bernstein/Rein Advertising, Inc. v. FCC, 830 F.2d 1188 (D.C.Cir. 1987). The Commission upheld Ms. Carrigan's integration proposal as the decisional factor under the comparative issue. Following the conclusion of that litigation which spanned a period of more than five years, Ms. Carrigan commenced operation of the station in April 1989 and within a period of five months, in August 1989, she contracted to sell the station for an immediate payment of $1,100,000 for a 49% interest with an option to acquire the remaining 51% at the end of the first year for an additional $3,100,000, or total consideration of $4,200,000. JA 394-395, 397-419. The buyer was a well-known and successful group broadcaster who has testified in another FCC proceeding that he does not employ the Commission's "integration" modus operandi; rather, he operates through paid managers at each station, not unlike the modus operandi proposed by Mrs. Bechtel. JA 395-396, 420-426.

The strange and unnatural structuring of station management that can occur under the Commission's "integration" criterion is illustrated by the facts of record here. (a) In the case of Anchor, four very close friends of some thirty years are going to establish a complete wall of silence about the operations of a radio station in which each of them has equal entrepreneurial interests in profits, losses and appreciation in the value of the radio station. These persons also have the power to decide and vote upon a sale of the station and dissolution of the partnership, although this voting and decision is to be accomplished without any previous communications regarding station operations. A retired and wealthy dentist, who maintains a yacht and three existing homes along the eastern seaboard, with a penchant for frequent travel abroad, wants the Court to believe he will move to the small and remote community of Selbyville, Delaware, and devote his full time year around to the management of a low powered Class A FM radio station in a summer seasonal market with highly limited business and social activity nine months out of the year. (b) In the case of SBC a married woman and the mother of three children, one of whom was only seven years old at the time of her testimony, wanted the Commission to believe she will move by herself to Selbyville and live there five days a week while working at the radio station managing its day-to-day activities, all without ever having consulted or even advising her husband of that commitment. Moreover, she eschewed any participation by or advice from her husband concerning the matter even though his career training and profession is in the communications field and they have worked side-by-side in a successful communications engineering practice. (c) Galaxy also involves a person who has no previous broadcast experience and who has access to two experienced broadcasters, one of whom is a member of his board of directors and the other of whom is his own son who lives in the same house, but likewise has eschewed reliance on these persons to the end that he will be credited for personally attending to oversight of the day-to-day operations of the radio station entirely on his own.

These are not normal or rational ways of doing business. Yet under the "integration" criterion, the Commission evaluated these three "integration" schemes while excluding from evidence the testimony of Mrs. Bechtel, the only applicant with a history of long-term residence in the service area, who proposes to oversee the operation of the radio station in a normal and rational way, hiring a professional general manager, drawing upon the advice of her husband whose career is in the communications law business, as well as the advice of experienced broadcast operators who are her friends, overseeing the operation both from her home in Potomac, Maryland as well as her summer home in the service area of the station, without any unrealistic contrivance that she would leave her family and move to Selbyville on a year-round basis so as to meet the Commission's "integration" requirement.

This disparate treatment of the three "integrated" applicants and the application of Mrs. Bechtel is arbitrary and capricious. Notwithstanding operation of the "integration" criterion under the 1965 policy statement for 26 years now, the Commission has never conducted studies or developed empirical evidence to demonstrate that "integrated" ownership (structured in accord with FCC policies and case decisions), in fact, yields program service more attuned to the public interest than oversight of management by ownership operating in the marketplace guided solely by rational, public relations and business considerations -- as proposed by Mrs. Bechtel. Nor has the Commission ever conducted studies or developed empirical evidence to demonstrate that its "integration" criterion, in fact, has increased the level of broadcast station ownership in the hands of local residents or women or minorities --

categories on which that criterion is premised. The Commission, to our knowledge, has not even made a simple satistical check on the actual length of time its "integrated" license winners have owned and operated their broadcast stations.

The Commission's integration criterion as applied in this case does not constitute reasoned decision-making as required by law. Motor Vehicle Mfr.'s Ass'n v. State Farm Mutual Auto. Ins. Co., supra. There is no valid basis to accept and consider the strained and highly dubious "integration" scenarios offered by the three integrated applicants in an effort to come within the Commission's integration requirements, while ignoring the rational and entirely believable management scenario proposed by Mrs. Bechtel based upon the real world of business and broadcast operations. There is no reason to believe that the former will better serve the public interest than the latter. The Commission's requirements for "integration" credit are esoteric bureaucratically conceived ideas which have never been tested or evaluated in actual practice. In 80-90% of the comparative hearing cases, the integration regulatory program does not work because the cases are settled and the applicants' proposals for integration are not operative. In the remaining 10-20% of the comparative hearing cases, there is no evidence that the winning applicant's integration proposals have ever been carried out on a lasting and sustained basis. No known studies have ever been conducted by the FCC on this score. No party to this proceeding, or the FCC, has come up with a single example of an integration success story. This agency action is unlawful, and should be reversed.

II.
Mrs. Bechtel's superior signal coverage will achieve permanent public interest benefits

In bright contrast to the operation of the Commission's policy with regard to integration, the Commission's policy promoting the efficient use of broadcast frequencies has been highly effective. Operating under the mandate of Section 307(b) of the Communications Act, throughout the years the Commission has been successful in allocating frequencies and approving construction permits for facilities to provide multiple broadcast services to communities and rural areas throughout the nation. E.g., FCC v. Allentown Broadcasting Corp., 349 U.S.358 (1955); Logansport Broadcasting Corp. v. United States, 210 F.2d 24 (D.C.Cir. 1954).

This activity has the enormous benefit of permanence. While the ownership of all broadcast properties is transitory and eventually does change, the facilities themselves remain permanent for continued service in the public interest. The facilities are not temporary or ephemeral. For example, the allocation of 630 kilocyles on the AM band to what is now radio station WMAL in 1925 has staked the service area of that station to the opportunity to receive such service for the past approximately 66 years, irrespective of the ownership, management or program format that may have been in place at any point in time. If the FCC in 1925 had favored one applicant over another because of a 20% differential in population covered (or a 2% differential), this would have yielded a public interest legacy of 20% (or 2%) greater coverage lasting 66 years to date, and still counting.

So, too, here. The application of Bechtel proposes a more efficient use of the frequency in question than any of the other applicants. The proposal of Bechtel will serve 40,465 persons. This is 21% greater than the population to be served by the Intervenor, Anchor, and 2% greater than the proposal of Galaxy. This difference, even the 2% difference, should be decisional. This more efficient use of the frequency will be a permanent legacy that -- like the hypthetical WMAL example given above -- will long outlast the initial ownership of the Selbyville facility.

It was arbitrary and capricious for the FCC to disregard this lasting benefit and in the process award the construction permit to Anchor on the ephemeral quicksand of FCC-sponsored "integrated" ownership. This agency action, also, is unlawful and should be reversed.

Respectfully submitted,

Gene A. Bechtel

Bechtel & Cole, Chartered
1901 L Street, N.W.
Suite 250
Washington, D.C. 20036
Telephone 202-833-4190
Telecopier 202-833-3084

Counsel for Susan M. Bechtel

August 6, 1991

CERTIFICATE OF SERVICE

I, Tiffany P. Simone, an administrative assistant at Bechtel & Cole, Chartered, certify that true copies of the foregoing COMMENTS OF SUSAN M. BECHTEL filed on behalf of Susan M. Bechtel were hand-delivered or placed in the United States mail, first class, postage prepaid, this 2nd day of June, 1992, to the following:

Via Hand Delivery
Donna R. Searcy, Secretary
Federal Communications Commission
1919 M Street, N.W., Suite 222
Washington, D.C. 20554

Via Hand Delivery
Robert L. Pettit, Esquire
General Counsel
Federal Communications Commission
1919 M Street, N.W., Suite 614
Washington, D.C. 20554

Lewis I. Cohen, Esquire
Cohen & Berfield
1129 20th Street, N.W.,
Washington, D.C. 20036
Counsel for Anchor Broadcasting Limited Partnership

Barry D. Wood, Esquire
Jones, Waldo, Holbrook
& McDonough, P.C.
2300 M Street, N.W., Suite 900
Washington, D.C. 20037
Counsel for Galaxy Communications, Inc.

Tiffany P. Simone
Tiffany P. Simone